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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Case No.:

**CLASS ACTION COMPLAINT**

*Jury Trial Demanded*

**RAFAEL SANTANA**, for himself and on  
behalf of all others similarly situated,

Plaintiff,

v.

**MAKE AMERICA GREAT AGAIN,  
INC.**, a Delaware Corporation; and **JOHN  
& JANE DOES 1–10**; and **DOES 1–10**,

Defendants.

Plaintiff Rafael Santana, on his own behalf and on behalf of all others similarly situated, for his Complaint and cause of action against Make America Great Again, Inc. alleges as follows upon personal knowledge as to himself and his own acts and experiences:

**I. PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Rafael Santana (“Santana”) was a citizen of Arizona at all times material to this complaint.

1           2. Defendant Make America Great Again, Inc. (“MAGA”) purports to be a  
2 Political Action Committee supporting more than one federal candidate, with its principal  
3 office located at 138 Conant Street Suite 202, Beverly, MA 01915.

4           3. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because  
5 this Complaint alleges violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227.

6           4. Venue is proper in this Court pursuant to 28 U.S.C. § 227(E) and  
7 28 U.S.C. § 1391.

8           5. This Court has personal jurisdiction over Defendant because it purposely  
9 directed tortious and illegal conduct at the forum out of which Plaintiff’s claims arise, thus  
10 satisfying the requirements of specific jurisdiction because the exercise of *in personam*  
11 jurisdiction as to the Defendant comports with “fair play and substantial justice.”

12 **II. SUMMARY OF THE CASE**

13           6. Santana’s allegations are based upon personal knowledge as to himself and his  
14 own acts, and, as to all other matters, upon information and belief, including investigation  
15 conducted by his attorneys.

16           7. MAGA purports to be a political action committee.

17           8. MAGA is headquartered in Beverly, MA.

18           9. MAGA operates under many fictitious names including “MAGA Inc.” and  
19 “MAGA PAC.”

20           10. MAGA targets Arizona residents with its political messages.

21           11. Santana and Class Members have no relationship with Defendant, and never  
22 provided their telephone numbers to Defendant.

23           12. Nevertheless, Defendant embarked on an unsolicited text message campaign,  
24 causing Santana and class members injuries, including invasion of their privacy, aggravation,  
25 annoyance, intrusion on seclusion, trespass, and conversion.

1           13. Through this action, Santana seeks injunctive relief to halt Defendants' illegal  
2 conduct.

3           14. Santana also seeks statutory damages on behalf of himself and Class Members,  
4 as defined below, and any other available legal or equitable remedies resulting from the illegal  
5 actions of Defendant.

6 **III. TCPA**

7           15. The TCPA prohibits: (1) any person from calling a cellular telephone number;  
8 (2) using an artificial or prerecorded voice; (3) without the recipient's prior express consent.  
9 47 U.S.C. § 227(b)(1)(A).

10          16. The TCPA (with exceptions that do not apply here) also prohibits the initiation  
11 of "any telephone call to any residential telephone line using an artificial or prerecorded voice  
12 to deliver a message without the prior express consent of the called party . . . ." 47  
13 U.S.C. § 227(b)(1)(B).

14          17. The TCPA prohibits communications like the ones described within this  
15 Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012).

16          18. In an action under the TCPA, a plaintiff must show only that the defendant  
17 "called a number assigned to a cellular telephone service using an automatic dialing system  
18 or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D.  
19 Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

20          19. The Federal Communications Commission ("FCC") is empowered to issue  
21 rules and regulations implementing the TCPA. According to the FCC's findings, calls in  
22 violation of the TCPA are prohibited because, as Congress found, automated or prerecorded  
23 telephone calls are a greater nuisance and invasion of privacy than live calls, and such calls  
24 can be costly and inconvenient. The FCC also recognized that wireless customers are charged  
25 for incoming calls whether they pay in advance or after the minutes are used.

1           20. A defendant must demonstrate that it obtained the plaintiff's prior express  
 2 consent before contacting an individual with a prerecorded voice. *See In the Matter of Rules*  
 3 *and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-  
 4 92 (2015) (requiring express consent "for non-telemarketing and non-advertising calls").

5           21. Lastly, with respect to standing, as recently held by the United States Court of  
 6 Appeals for the Ninth Circuit:

Unsolicited [] phone calls or text messages, by their nature,  
 invade the privacy and disturb the solitude of their recipients. A  
 plaintiff alleging a violation under the TCPA "need not allege any  
 additional harm beyond the one Congress has identified."

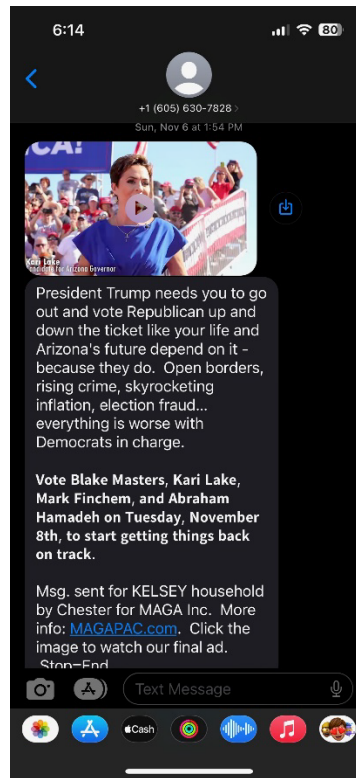
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 10 *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 (9th Cir. 2017) (quoting *Spokeo,*  
 11 *Inc. v. Robins*, 578 U.S. 330 (2016)).

12           22. Similarly, the United States Court of Appeals for the Second Circuit recently  
 13 held that the receipt of an unsolicited call "demonstrates more than a bare violation and  
 14 satisfies the concrete-injury requirement for standing." *Leyse v. Lifetime Entm't Servs., LLC*,  
 15 Nos. 16-1133-cv, 16-1425-cv, 2017 U.S. App. LEXIS 2607 (2d Cir. Feb. 15, 2017) (citing *In*  
 16 *re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 105 (2d Cir. 2013)  
 17 ("The injury-in-fact necessary for standing need not be large; an identifiable trifle will  
 18 suffice."); *Golan v. Veritas Entm't, LLC*, 788 F.3d 814, 819-21 (8th Cir. 2015) (holding that  
 19 receipt of two brief unsolicited robocalls as voicemail messages was sufficient to establish  
 20 standing under TCPA); *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781  
 21 F.3d 1245, 1252 (11th Cir. 2015) (holding that injury under similar TCPA provision may be  
 22 shown by one-minute occupation of fax machine)).

#### 23 **IV. GENERAL ALLEGATIONS**

24           23. Defendant embarked upon an intrusive automated text messaging campaign to  
 25 promote its political agenda.  
 26

1           24. On November 6, 2022, Defendant placed, or caused to be placed, an automated  
2 text message to Santana's cellular telephone number ending in 1122 ("1122 Number"):  
3



16  
17           25. The text message included a video file that was automatically downloaded to  
18 Santana's phone and contained an artificial or prerecorded voice.

19           26. Santana received the subject text within the State of Arizona, therefore,  
20 Defendant's violations of the TCPA occurred within the State of Arizona.

21           27. Upon information and belief, Defendant caused similar texts to be sent to other  
22 individuals residing within Arizona.

23           28. At no point in time did Santana provide Defendant with his express consent to  
24 be contacted by telephone using an artificial or prerecorded voice.

25           29. Santana is the subscriber and sole user of the 1122 Number. It is his only  
26 residential telephone.

1           30. It is unknown how Defendant obtained the 1122 Number.

2           31. The reported phone number for the text messages constantly returns a busy  
3 signal.

4           32. The text message does not provide any identifiable characteristic of the intended  
5 recipient; rather, the text message is drafted so that it can be sent out *en masse* without  
6 variation.

7           33. Defendant's unsolicited texts caused Santana actual harm, including invasion  
8 of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.

9           34. Defendant's text messages also inconvenienced Santana and caused disruption  
10 to his daily life.

11 **V. CLASS ALLEGATIONS**

12           35. Courts regularly certify class actions seeking redress under the TCPA. *See, e.g.,*  
13 *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036 (9th Cir. 2012) (affirming  
14 certification of provisional class under TCPA).

15 **A. Proposed Class**

16           36. Santana brings this case as a class action pursuant to Federal Rule of Civil  
17 Procedure 23, on behalf of himself and all others similarly situated.

18           37. The proposed class members (the "Class") are readily ascertainable.

19           38. The number and identity of the Class are determinable from the records of  
20 Defendant.

21           39. For purpose of notice and other purposes related to this action, upon information  
22 and belief, the names and addresses of the Class are readily available from Defendant.

23           40. Notice to the Class can be provided by means permissible under FRCP 23.

24           41. Santana brings this case on behalf of the below defined Class:

25           All persons within the United States (1) who, within the four years  
26 prior to the filing of this Complaint; (2) were sent a text message;  
(3) from Defendant or anyone on Defendant's behalf; (4) to the

1 person's cellular telephone number or residential line; (5) that  
2 included an artificial or prerecorded voice in a video; (6) without  
the recipient's prior express consent.

3 42. Defendant and their employees or agents are excluded from the Class.

4 43. Santana does not know the number of members in the Class but believes the  
5 number to *at least* be in the thousands, if not tens-of-thousands.

6 **B. Numerosity**

7 44. Upon information and belief, Defendant has placed automated text messages to  
8 cellular telephone numbers belonging to thousands of voters throughout the United States  
9 without their prior express consent.

10 45. Upon information and belief, the members of the Class are so numerous that  
11 joinder of all members is impracticable.

12 46. The exact number and identities of the Class members are unknown at this time  
13 and can be ascertained only through discovery.

14 47. Identification of the Class members is a matter capable of ministerial  
15 determination from Defendant's text message records.

16 **C. Common Questions of Law and Fact**

17 48. There are numerous questions of law and fact common to the Class that  
18 predominate over any questions affecting only individual members of the Class.

19 49. Among the questions of law and fact common to the Class are:

- 20 (i) Whether Defendant sent non-emergency text messages to Plaintiff and  
21 Class members' cellular telephones that included an artificial or  
22 prerecorded voice in a video file;
- 23 (ii) Whether Defendant can meet its burden of showing that it obtained prior  
24 express written consent to make such text messages;
- 25 (iii) Whether Defendant is liable for damages, and the amount of such  
26 damages; and

1 (iv) Whether Defendant should be permanently enjoined from such conduct  
2 in the future.

3 50. The common questions in this case will have common answers. If Santana's  
4 claim that Defendant sent text messages to telephone numbers assigned to cellular telephone  
5 services is accurate, Santana and the Class members will have identical claims capable of  
6 being efficiently adjudicated and administered in this case.

7 **D. Typicality**

8 51. Defendant has acted on grounds equally applicable to the entire Class, making  
9 final relief appropriate to Class as a whole.

10 **E. Adequacy of Representation**

11 52. Santana can fairly and adequately protect the interests of the Class and has no  
12 interests antagonistic to the same; to the extent necessary and appropriate, additional putative  
13 representatives of the Class may be named as plaintiffs by way of amendment.

14 53. Plaintiff is represented by counsel experienced and competent in both class  
15 actions and consumer rights litigation.

16 54. Counsel is willing and able to devote the legal and financial resources necessary  
17 for the successful prosecution of this action.

18 55. Santana will fully and adequately assert and protect the interests of the Class  
19 and has retained competent counsel that has previous experience in class action litigation.  
20 *Zwicky et. al. v. Diamond Resorts International et. al.*, District of Arizona  
21 2:20-CV-02322-PHX-DJH. Accordingly, Santana is an adequate representative and will  
22 fairly and adequately protect the interests of the Class.

23 **F. Superiority**

24 56. Class action treatment will permit many similarly situated persons to prosecute  
25 their common claims in a single forum simultaneously, efficiently, and without the  
26 unnecessary duplication of effort and expense that individual actions would entail.



1           57. Further, the dollar amounts of each individual claim are too small to  
2 economically justify full-blown litigation efforts against Defendant with the result that most  
3 of the individual claims of the Class would otherwise go unremedied, and Defendants would  
4 be allowed to continue harassing people despite knowing that its conduct is illegal.

5           58. The likelihood of individual Class members prosecuting their own separate  
6 claims is remote, and, even if every member of the Class could afford individual litigation,  
7 the court system would be unduly burdened by individual litigation of such cases.

8           59. Individual litigation would also pose a risk of inconsistent adjudications on  
9 identical facts and identical legal issues.

10          60. Individual litigation may also be dispositive of the interests of the Class,  
11 although certain class members are not parties to such actions.

12          61. For the foregoing reasons, class treatment is superior to all other available  
13 methods for the fair and efficient adjudication of this lawsuit as it represents the most efficient  
14 and effective use of the Court's limited resources and the most efficient and effective way of  
15 vindicating the rights of the Class.

## 16 **VI. CAUSE OF ACTION**

### 17 **1. COUNT I: VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(b)(1)(A)**

18          62. All foregoing allegations are incorporated herein by reference.

19          63. It is a violation of the TCPA to make “any call (other than a call made for  
20 emergency purposes or made with the prior express consent of the called party) using . . . an  
21 artificial or prerecorded voice . . . to any telephone number assigned to a . . . cellular telephone  
22 service ....” 47 U.S.C. § 227(b)(1)(A)(iii).

23          64. Defendant – or third parties directed by Defendant – sent text messages that  
24 included a video that contained an artificial or prerecorded voice for non-emergency  
25 telephone calls to the cellular telephones of Plaintiff and the other members of the Class.  
26

1           65. These text messages were sent without regard to whether Defendant had first  
 2 obtained express permission from the text messaged party to make such text messages. In  
 3 fact, Defendant did not have prior express consent to text message the cell phones of Plaintiff  
 4 and the other members of the putative Class when its text messages were made.

5           66. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by sending text messages  
 6 that included a video that contained an artificial or prerecorded voice for non-emergency  
 7 telephone text messages to the cell phones of Plaintiff and the other members of the putative  
 8 Class without their prior express consent.

9           67. Defendant is liable for each such violation of the TCPA.

10          68. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA,  
 11 Plaintiff and Class Members were harmed and are each entitled to a minimum of \$500.00 in  
 12 damages for each violation.

13          69. If Defendant's actions were willful and knowing, Plaintiff and Class Members  
 14 are entitled to treble damages.

15          70. Santana and the class are also entitled to a permanent injunction against future  
 16 calls or text messages.

17          **2. COUNT II: VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(b)(1)(B)**

18          71. All foregoing allegations are incorporated herein by reference.

19          72. It is a violation of the TCPA to initiate "any telephone call to any residential  
 20 telephone line using an artificial or prerecorded voice to deliver a message without the prior  
 21 express consent of the called party . . . ." 47 U.S.C. § 227(b)(1)(B).

22          73. Defendant – or third parties directed by Defendant – sent text messages to  
 23 Santana's residential cellular phone containing a prerecorded voice to deliver MAGA's  
 24 message to the residential cellular phones of Plaintiff and other members of the Class.  
 25  
 26

1           74. These text messages were sent without regard to whether Defendant had first  
2 obtained express permission from the text messaged party to make such text messages. In  
3 fact, Defendant did not have prior express consent to text message the cellular phones of  
4 Plaintiff and the other members of the putative Class when its text messages were made.

5           75. Defendants violated § 227(b)(1)(B) of the TCPA by sending texts with  
6 prerecorded voices to the residential cellular phones of Plaintiff and the other members of the  
7 putative Class, without their prior express consent.

8           76. Defendant is liable for each such violation of the TCPA.

9           77. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA,  
10 Plaintiff and Class Members were harmed and are each entitled to a minimum of \$500.00 in  
11 damages for each violation.

12           78. If Defendant's actions were willful and knowing, Plaintiff and Class Members  
13 are entitled to treble damages.

14           79. Santana and the class are also entitled to a permanent injunction against future  
15 calls or text messages.

16           **WHEREFORE**, Santana, for himself and on behalf of all others similarly situated,  
17 respectfully prays for the following relief:

18           A. A declaration that Defendant's practices described herein violate the Telephone  
19 Consumer Protection Act, 47 U.S.C. § 227;

20           B. An injunction prohibiting Defendant from using an automatic telephone dialing  
21 system to call or text message telephone numbers assigned to cellular telephones without the  
22 prior express consent of the called party;

23           C. An injunction prohibiting Defendant from sending text messages that include a  
24 video that contain an artificial or prerecorded voice to residential cellular telephones without  
25 the prior express consent of the called party;  
26

1 D. An award of actual, statutory damages, and/or trebled statutory damages;

2 E. An award of costs and reasonable attorney's fees incurred in the prosecution of  
3 the Class claims herein;

4 F. Certification of the Class for the claim brought herein pursuant to Federal Rule  
5 of Civil Procedure 23; and

6 G. For such other relief as the Court deems just and proper.  
7

8 RESPECTFULLY SUBMITTED this 12th day of January, 2023.

9 /s/ Jon L. Phelps

10 Jon L. Phelps (027152)

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